① **89-1011**

Supreme Court, U.S.
FILED
DEC 21 1989
JOSEPH F. SPANIOL, JR.
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1989-90 TERM

IN THE SUPREME COURT OF THE UNITED STATES

SUPREME COURT NUMBER _______

FREDERICK WAYNE HELTON,

Petitioner,

vs.

STATE OF ALABAMA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA
NO. 88-1336

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Attorney for Petitioner

46pp

QUESTIONS PRESENTED FOR REVIEW

I. WAS THE SEARCH OF THE PETITIONER'S HOUSE CONSTITUTIONALLY DEFICIENT BECAUSE IT ERRONEOUSLY DESCRIBED THE PLACE TO BE SEARCHED IN VIOLATION OF THE PARTICULARITY REQUIREMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

II. DID THE ILLEGAL DETENTION OF THE PETITIONER VIOLATE THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND REQUIRE SUPPRESSION OF HIS SUBSEQUENT STATEMENT AS "FRUIT OF THE POISONOUS TREE?"

III. DID THE CONVICTION OF THE PETITIONER WITHOUT SUFFICIENT LEGAL EVIDENCE DEPRIVE THE PETITIONER OF

A FAIR TRIAL AND DUE PROCESS OF LAW UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

LIST OF PARTIES

The parties to this proceeding are Frederick Wayne Helton and the State of Alabama.

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CONSTITITIUTIONAL PROVISIONS

OPINIONS DELIVERED IN COURTS BELOW

The affirmance of Petitioner's conviction by the Court of Criminal Appeals of Alabama is reported as Helton v. State, [Ms. 1 DIV. 820, May 12, 1989], ___ So.2d ___ (Ala.Cr.App. 1989). The Alabama Supreme Court denied certiorari without opinion. The opinion of the Court of Criminal Appeals is set forth in its entirety infra in the Appendix.

GROUNDS UPON WHICH SUPREME COURT JURISDICTION IS INVOKED

The statutory provision which confers upon this Court jurisdiction to review the judgment or decree in question by writ of certiorari is 28 U.S.C. §1257(3), which provides that judgments or decrees rendered by the highest court

[illegible]

The [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

The [illegible]

conclude upon the [illegible]

review the judgment of [illegible]

by writ of certiorari [illegible]

§1257(3), which provides that [illegible]

or decrees rendered by the [illegible]

of a state in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari, where any title, right, privilege or immunity is specially set up or claimed under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES

UNITED STATES CONSTITUTION
AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, support by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

UNITED STATES CONSTITUTION
AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and

cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES CONSTITUTION
AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any laws which abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have

cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. The Congress shall have

power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT OF THE CASE

Frederick Wayne Helton was convicted for the possession of lysergic acid diethylamide (L.S.D.), and was sentenced to six years imprisonment, fined $5,000.00, and ordered to pay $25.00 to the Victim's Compensation Fund.

Helton was tried non-jury by the trial court. The essential facts presented at trial were that a "controlled buy" involving a confidential informant conducted by Mobile Police Officer Cesar Perez at an apartment alleged to be Helton's. Although the informant described and showed the apartment building to Perez and Perez observed the informant enter the building, the officer failed to obtain the specific address of the residence. The informant claimed to have purchased a

"blotter stamp" of L.S.D. from an individual known to him as "Wayne."

Perez obtained a search warrant to search the Helton residence, incorrectly identified as being on Center Street. The Helton residence was on Center Drive.

The warrant was executed as follows: Perez waited for Helton to leave and then had a uniformed police officer stop Helton, inform him of the warrant and order him to accompany the officers back to his residence. Although Officer Jenkins considered Helton under arrest at this point, no warrant to arrest was present and no violations had occurred. Helton exclaimed "Oh, shit" when a blue vase containing contraband was seized. Helton was arrested.

The Alabama Court of Criminal Appeals affirmed Helton's conviction rejecting arguments that the search of

Helton's home and his seizure were constitutionally deficient and as a result, sufficient evidence to convict was not present. (Appellant's brief, p. 8-13). These issues were preserved below by Helton's motions to suppress and for judgment of acquittal. Helton argued that the search warrant failed to meet the particularity requirement of the Fourth Amendment by incorrectly identifying Helton's address as Center Street. Helton also contended that his detention was illegal since he was arrested without probable cause or a warrant, and that his subsequent statement should have been suppressed as a fruit of the unlawful detention. Helton argued that it followed that without the unconstitutionally derived fruits of the unlawful search and seizure, sufficient legal evidence to defendant's [illegible]

constitutional [illegible]

found, sufficient [illegible]

was the critical [illegible]

Court. There is [illegible]

by Nelson's [illegible]

lacking [illegible]

that the [illegible]

the particularity [illegible]

Nelson's [illegible]

Identifying [illegible]

Illinois. Nelson also [illegible]

Detectives [illegible]

arrested without [illegible]

warrant, and that his [illegible]

statement should have been [illegible]

a fruit of the [illegible]

Nelson argued that in [illegible]

without the unconstitutionally [illegible]

fruits of the unlawful [illegible]

seizure, sufficient legal [illegible]

convict was not present.

The Alabama Supreme Court denied Helton's petition for a writ of certiorari.

ARGUMENT

I. THE SEARCH OF THE PETITIONER'S HOUSE WAS CONSTITUTIONALLY DEFICIENT BECAUSE IT ERRONEOUSLY DESCRIBED THE PLACE TO BE SEARCHED IN VIOLATION OF THE PARTICULARITY REQUIREMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The affidavit and the search warrant in the Petitioner's case fail to accurately describe the property to be searched by erroneously identifying the property as located on "Center Street" and thus failing to correctly identify the property which is on Center Drive.

The Fourth Amendment to the United States Constitution requires that search warrants "particularly describe" the place to be searched. U.S. CONST. AMEND. IV. The description in the search warrant must be such "that the officer with [the] warrant can, with reasonable effort, ascertain and identify the place intended" to be searched. <u>Steele v.</u>

United States, 267 U.S. 498 (1925); Finch v. State, 479 So.2d 1314 (Ala.Cr.App. 1985). In addition, a warrant may be insufficient if there is "any reasonable probability that another premise might be mistakenly searched." United States v. Critcho, 601 F.2d 369 (8th Cir.), cert. den., 444 U.S. 871 (1979).

The testimony at the Petitioner's trial established the presence of both a Center Street and a Center Drive in the City of Mobile. Thus, it cannot be said that the warrant was sufficient:

> "In a search warrant, the description of the place to be searched must be sufficient enough to point out the place to be searched to the exclusion of all others and on inquiry lead the searching officers unerringly to it." Jackson v. State, 99 So. 548 (Fla. 1924).

Officer Perez failed to obtain an accurate description of the place to be searched. His efforts do not satisfy the

requirements of the Fourth Amendment which was "not adopted to assist the authorities in their searches, but to protect the people." Finch v. State, 479 So.2d 1314, 1318 (Ala.Cr.App. 1985). The trial court violated the Fourth Amendment by failing to grant the motion to suppress the evidence seized as a result of the search warrant.

II. THE ILLEGAL DETENTION OF THE PETITIONER VIOLATED THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND REQUIRED SUPPRESSION OF HIS SUBSEQUENT STATEMENT AS "FRUIT OF THE POISONOUS TREE."

The Petitioner was allowed to leave his home after surveillance was established; he was then stopped by a uniformed police officer as if on a routine traffic stop. The Petitioner was considered to be under arrest by the officer at this time. No arrest warrant

was present and no violations had occurred in the arresting officer's presence.

Subsequent to the arrest, the Petitioner was returned to his house where he made the incriminating "oh, shit" statement following the seizure of the vase containing contraband.

The Petitioner's arrest was illegal since it was not predicated on a warrant or probable cause:

> "An officer may only lawfully arrest a person when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime." Terry v. Ohio, 392 U.S. 1 (1968).

Because his arrest was illegal, his subsequent statement should have been suppressed:

> "Verbal evidence which derives from an unauthorized arrest is 'fruit of the official illegality and must be suppressed unless it has been acquired by means sufficiently distinguishable to be purged of the primary taint." Wong Sun v. United

States, 371 U.S. 471 (1963).

The Petitioner's arrest does not satisfy the Terry standard as stated above; the trial court erred in failing to suppress the "fruit" of that arrest.

III. THE CONVICTION OF THE PETITIONER WITHOUT SUFFICIENT LEGAL EVIDENCE DEPRIVED THE PETITIONER OF A FAIR TRIAL AND DUE PROCESS OF LAW UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The legal evidence at trial established only that Petitioner resided in and received mail at his residence. This evidence alone, without that stemming from the official illegality, is not sufficient to sustain the Petitioner's conviction.

A possession conviction requires that "(1) actual or potential physical control, (2) intention to exercise dominion, and (3) external manifestations of intent and control" be established.

Radke v. State, 293 So.2d 312 (1973). Where actual possession of the contraband is not shown and constructive possession is relied on, "the State must show beyond a reasonable doubt. . . that the accused knew of the presence of the contraband." Temple v. State, 366 So.2d 740 (Ala.Cr.App. 1978); Yarbrough v. State, 237 So.2d 520 (Ala.Cr.App. 1970).

The legal evidence at trial was not sufficient to satisfy the above standard. To convict without sufficient evidence is a denial of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. U.S. CONST. AMEND. XIV; Vachon v. New Hampshire, 414 U.S. 478 (1974); Adderly v. Florida, 38 U.S. 39 (1966); Garner v. Louisiana, 368 U.S. 157 (1961); Thornhill v. Alabama, 310 U.S. 88 (1940); and DeJonge v. Oregon, 299 U.S. 353 (1937).

The trial court erred in convicting the Petitioner. Consequently, the Court should grant the writ of certiorari in this case and hold that Alabama is required under the due process clause of the Fourteenth Amendment to follow constitutional mandates.

Thomas M. Haas

THOMAS M. HAAS

CERTIFICATE OF SERVICE

I, Thomas M. Haas, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have served three (3) copies of this Petition for a Writ of Certiorari on the Honorable Don Siegleman, Attorney General of Alabama, by depositing same in the United States mail, properly addressed and first class postage prepaid on this 20th day of December, 1989.

Thomas M. Haas

THOMAS M. HAAS

APPENDIX

THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1988-89

1 Div. 820

Frederick Wayne Helton

v

State

Appeal from Mobile Circuit Court

BOWEN, JUDGE

Frederick Wayne Helton was convicted for the possession of lysergic acid diethylamide (L.S.D.), and was sentenced to

six years' imprisonment, fined $5,000, and ordered to pay $25 to the Victim's Compensation Fund. Three issues are raised on this appeal from that conviction.

Mobile Police Officer Cesar Perez testified that, on May 18, 1987, he and a confidential informant conducted a "controlled buy" at the defendant's residence. Officer Perez observed the informant entering a residence on Center Drive and met with the informant directly after his exit therefrom. The informant then handed Perez a "blotter stamp" of L.S.D. and told him that he had purchased the stamp from a white male known to him only as "Wayne". On May 19, Officer Perez obtained a warrant to search the defendant's residence.

On May 20, 1987, surveillance of Helton's residence was established. The

defendant was seen leaving the premises in a white station wagon. As planned, the defendant was allowed to drive away from the residence but was stopped by a marked police car a few blocks from his house. Helton was asked to get out of his vehicle and to produce some identification. He complied with these requests. Upon receiving the defendant's identification, the police informed him that they had a search warrant for his residence. The defendant was then handcuffed, placed in the patrol car and transported back to his residence.

The officers obtained the defendant's door key and entered the house in order to execute the search warrant. Various controlled substanced and drup paraphernalia were found in the residence.

I

The defendant contends that the description of the location of the residence contained in the search warrant was constitutionally deficient. He asserts that since the warrant contained the wrong public way designation it did not describe the place to be searched with sufficient particularity to satisfy the Fourth Amendment.

The search warrant described the premises to be searched as a "Yellow, Tan house with brown trimming surrounded by burglar bars, located on Center Street, approximately 2/10's of a mile South of Old Shell Road, first house on the right facing Center Street off Old Shell."

The description of the house was correct in all respects except that the

house was located on Center Drive and not Center Street.

The circuit court properly denied the defendant's motion to suppress the incriminating evidence found as a result of the execution of the search warrant.

> "A warrant's description of the place to be searched is not required to meet technical requirements or have the specificity sought by conveyancers. The warrant need only describe the place to be searched with sufficient partifularity to direct the searcher, to confine his examination to the place described and to advise those being searched of his authority. An erroneous description of premises to be searched does not necessarily render a warrant invalid. The Fourth Amendment requires only that the search warrant describe the premises in such a way that the searching officer may '"with reasonable effort ascertain and identify the place intended."' United States v. Weinstein, 762 F.2d 1522, 1532 (11th Cir. 1985) (citations omitted)." United States v. Burke, 784 F. 2d 1090, 1092 (11th Cir. 1986), cert. denied, 476 U.S. 1174, 106 S. Ct. 2901, 90 L. Ed. 2d 987 (1986).

The test for determining the suf-

ficiency of the description of the place to be searched is set out in Lyons v. Robinson, 783 F. 2d 737, 738 (8th Cir. 1985):

> "The test for determining the sufficiency of the description of the place to be searched is whether the place to be searched is described with sufficient particularity as to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premise might be mistakenly searched. United States v. Gitcho, 601 F.2d 369, 371 (8th Cir.) (citations omitted), cert. denied, 444 U.S. 871, 100 S.Ct. 148, 62 L. Ed. 2d 96 (1979). Thus, where a search warrant contain[s] information that particularly identified the place to be searched, [many courts have] found the description to be sufficient even though it listed the wrong address. United States v. McCain, 677 F.2d 657, 660-61 (8th Cir. 1982)."

In the instant case, the warrant listed the residence to be searched as located on "Center Street," whereas the residence was actually located on Center Drive. However, it is clear that the

error in the warrant was not misleading or confusing.

> "In evaluating the effect of a wrong address on the sufficiency of a warrant, this Court has also taken into account the knowledge of the officer executing the warrant, even where such knowledge was not reflected in the warrant or in the affidavit supporting the warrant. In United States v. Weinstein, [762 F. 2d 1522], where a search warrant failed to specify correctly the entrance leading to the premises to be searched, we considered it significant that the agent conducting the search had been to the premises before and that he had no doubt which door gave access to the correct premises. Id. at 1532-33" Burke, 784 F. 2d at 1092-1093.

In United States v. Turner, 770 F.2d 1508, 1511 (9th Cir. 1985), cert. denied, 475 U. S. 1026, 106, 106 S.Ct. 1224, 89 L.Ed. 2d 334 (1986), the court observed: "In the case at bar, the warrant description was sufficiently particular. The verbal description contained in the warrant described the house to be searched with great particularity; the address in

the warrant was reasonable for the location intended; the house had been under surveillance before the warrant was sought; the warrant was executed by an officer who had participated in applying for the warrant and who personally knew which premises were intended to be searched; [instructions on how to reach the property by car delineated both adjacent roads and mileage]; and the premises that were intended to be searched were those actually searched. Under these circumstances, there was virtually no chance that the executing officer would have any trouble locating and identifying the premises to be searched, or that he would mistakenly search another house." See also Burke, 784 F.2d at 1093.

Under these circumstances,we find

that the warrant satisfied the particularity requirements of the Fourth Amendment and that the defendant's motion to suppress was properly denied.

II

The defendant contends that his arrest was illegal, and that the statement he made during the search should have been suppressed because it was "fruit of the official illegality."

On the evening of May 18, 1987, Officer Perez and a confidential informant made a "controlled buy" of L.S.D. at a residence located on Center Drive. Officer Perez was unable to identify the person who conducted the sale but he was given a description of that person by the informant. The informant also told Officer Perez that the seller was known

to him as "Wayne." Based on his own observations and the information he received from the informant, Officer Perez obtained a search warrant for the residence where the sale of illegal drugs had taken place.

On May 20, the defendant's residence was placed under surveillance team when he observed a man leaving the residence. This man matched the informant's description of the person from whom the informant had purchased the L.S.D. on May 18. As arranged, the defendant was stopped by police after he had driven a few blocks from his residence. Officer Perez testified that the defendant was detained in this manner because the informant had stated that the defendant had made the comment that "the police

would never get to him, [because] the house was surrounded by burglar bars and . . . if [the police] would try to make a forced entry into the residence, any evidence that [was] in the house would be destroyed before [the police] gained entry into the residence."

After the defendant was stopped by the marked patrol car, he was asked to produce some identification and was then informed that the police had a search warrant for his residence. The Defendant was then handcuffed, placed in the patrol car, and transported to his residence.

The defendant argues that this stop and arrest were not based upon probable cause. We disagree.

> "An officer has probable cause to arrest when, at the time the arrest is made, the facts and circumstances within his knowledge, and of which he has reasonably trustworthy information,

would [illegible] have [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

There [illegible] probable [illegible] [illegible] [illegible] [illegible] [illegible] the defendant [illegible] placed in the [illegible] in his residence.

The defendant [illegible] stop and arrest [illegible] probable cause. [illegible]

> "An officer has probable cause to arrest when, at the time the arrest is made, the facts and circumstances within his knowledge and of which he has reasonably trustworthy [illegible]

[illegible] Ill.

are sufficient to lead a prudent person to believe that the suspect is committing or has committed an offense. Beck v. Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 224, 13 L.Ed.2d 142 (1964)." Gord v. State, 475 So.2d 900, 902-903 (Ala.Cr.App. 1985); see also United States v. Taylor, 797 F.2d 1563, 1564 (11th Cir. 1986).

The record reveals that the order to stop and arrest the defendant was predicated on the previous controlled purchase of L.S.D. and information received from the confidential informant. This Court has held that [p]robable cause may be established by a previously conducted 'controlled buy.'" Gord, 475 So.2d at 903.

In the instant case the police had reasonable cause to believe that the defendant had committed a felony on May 18, 1987, by selling L.S.D. to a confidential informant. "This, in itself, gave them the authority to arrest the defendant without a warrant

pursuant to Alabama Code 1975, § 15-10-3." Id. This Code section provides in pertinent part that:

> "An officer may arrest any person without a warrant, on any day, and at any time . . . .
>
> "(3) When a felony has been committed and he has reasonable cause to believe that the person arrested committed it . . . ."

In the present case, a felony had been committed and the arresting officer had reasonable cause to believe that the person arrested committed that offense. Therefore, the arrest was legal and any statement made by the defendant after such arrest was admissible into evidence.

III

The Defendant argues that the State's evidence is insufficient to support his conviction. However, we find that the circumstantial evidence

presented by the State is more than adequate to prove his guilt beyond a reasonable doubt.

On May 18, 1987, Officer Cesar Perez and a confidential informant conducted a controlled purchase of L.S.D. at a residence on Center Drive. The informant described the seller's appearance to Perez and told the officer that he knew him as "Wayne." On May 19, Officer Perez prepared a search affidavit. The affidavit was predicated upon Perez's own observations and on information he had received from the confidential informant. On the strength of the affidavit, a search warrant was issued.

On May 20, the defendant's residence was placed under surveillance by Mobile Police Officers Cesar Perez and Rufus Brown. Officer Perez observed the

defendant leaving the premises in a white station wagon. After the defendant had driven a few blocks, he was stopped by a marked patrol car. He was asked to get out of the car and show the officers some identification. The defendant complied with these requests. The officers informed him that they had a search warrant for his residence. He was then handcuffed, put in the rear of the patrol car and driven to his residence. The officers obtained Helton's house key from his person and entered the residence in order to execute the search warrant. During the search, the officers discovered a considerable amount of L.S.D., other controlled substances, and drug paraphernalia. Mail addressed to the defendant at both 108 Center Drive and 108 Center Street was also found inside the residence.

During the search, one of the officers discovered that a blue vase contained contraband. When the officer brought this vase to Officer Perez, the defendant, who was sitting nearby, said, "Oh, shit!"

The defendant asserts that the evidence was not sufficient to support a finding that he had possession of the contraband. He argues that the illegal substances could have been placed in the house by an individual who had once lived with him. This contention does not absolve the defendant of criminal liability because "the possession of illegal drugs is susceptible of joint commission." Mitchell v. State, 395 So.2d 124, 126 (Ala.Cr.App. 1980), cert. denied, Ex parte Mitchell, 395 So.2d 127 (Ala. 1981).

Furthermore, a reasonable inference

which could have been drawn from the State's evidence was that the defendant was, and had been for several months prior to the search, the sole occupant of the residence.

In White v. State [Ms. 4 DIV. 966, March 31, 1989], ___ So.2d___ (Ala.Cr.App. 1989), this Court set out the standards for reviewing a conviction based on circumstantial evidence. We believe that the evidence produced by the State, when viewed in a light most favorable to the prosecution, was sufficient to allow the trial judge to reasonably conclude that the evidence excluded every reasonable hypothesis except that of guilt.

"Actual physical personal possession of contraband is not required and possession may be constructive as well as actual. Hancock v. State, 368 So.2d 581 (Ala.Cr.App.), cert. denied, Ex parte Hancock, 368 So.2d 587 (Ala. 1979). However, where constructive possession of contraband

is relied upon, it is necessary to show guilty knowledge. This knowledge may be shown by circumstantial evidence. Blaine v. State, 366 So.2d 353 (Ala.Cr.App. 1978); Henderson v. State, 347 So.2d 540 (Ala.Cr.App. 1977).

". . .[W]here drugs are found on premises under the control of the defendant an inference may arise that the defendant had knowledge and possession of them. 28 C.J.S. Drugs and Narcotics Supplement, Section 210 (1974)." Mitchell v. State, 395 So.2d 124, 126 (Ala.Cr.App. 1980), cert. denied, Ex parte Mitchell, 395 So.2d 127 (Ala. 1981).

The record in the instant case reveals that controlled substances were found in the bedroom among the defendant's personal belongings. A large zip lock bag containing 403 L.S.D. "blotter stamps" was found in the bedroom in a musical equipment folder. The defendant was a member of the band Target. A brown bottle containing 96 L.S.D. tablets was found in plain view on top of the dresser. A blue vase containing contraband and a perforated

piece of paper (a "stamp") was also discovered in the bedroom. When the defendant realized that the police officers had found the case, he said "Oh, shit." From this statement, the trier of fact could reasonably infer the defendant's consciousness of guilt. "Once it is established that the defendant resided in the house, his connection with the drugs is supplied by the quantity and location of the drugs throughout the house." Mitchell, 395 So.2d at 126.

In the case now before us, the drugs were so situated throughout the only bedroom in the house that it would be reasonable to conclude that the lone occupant of the dwelling would have knowledge of their presence. In weighing the evidence, "courts and juries must use common sense, common

reason, and common observation as well as a common knowledge of the usual acts of men and women under given circumstances." Thompson v. State, 21 Ala.App. 498, 109 So. 557 (1926).

"Here, the inference of knowledge and control, on the basis of human experience and with the application of common sense, is a probable and natural explanation of the facts proven, and logically flows from those facts. See 29 Am.Jur.2d Evidence Section 162 (1967). 'It is a logical and reasonable deduction from the evidence and is not supposition or conjecture.' Thomas v. State, 363 So.2d 1020, 1022 (Ala.Cr.App. 1978).

"The trier of fact is 'under a duty to draw whatever permissible inferences it may from circumstantial evidence and to base its verdict on whatever permissible inferences it chooses to draw.' Gullatt v. State, 409 So.2d 466, 472 (Ala.Cr.App. 1981)." Roberts v. State, 451 So.2d 422, 425 (Ala.Cr.App. 1984).

Here, there was legal evidence from which the factfinder could have, by fair inference, found the accused guilty. Consequently, this Court will not overturn the trial judge's finding.

See Eady v. State, 495 So.2d 1161, 1164 (Ala.Cr.App. 1986).

The judgment of the circuit court is due to be, and it is hereby, affirmed.

AFFIRMED.

All Judges concur.

(2)

89-1011

Supreme Court, U.S.
FILED
JAN 17 1990
JOSEPH F. SPANIOL, JR
CLERK

NO. ________

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1989

FREDERICK WAYNE HELTON,

PETITIONER

VS.

STATE OF ALABAMA,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF AND ARGUMENT IN OPPOSITION
TO THE PETITION

OF

DON SIEGELMAN
ATTORNEY GENERAL

AND

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR RESPONDENT

ADDRESS OF COUNSEL:

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Alabama State House
11 South Union Street
Montgomery, Alabama 36130
(205) 261-7300

26 pp

QUESTIONS PRESENTED

1. Does a clerical error in the description of the place to be searched invalidate a search warrant, where the description taken as a whole would permit any reasonable officer to identify the place to be searched to the exclusion of all others?

2. Where officers know that L.S.D. has been recently obtained from a white male named "Wayne" at a certain residence, and a neutral magistrate has found probable cause to believe that L.S.D. is located at said residence, is there probable cause to arrest the only person observed at the residence during a period of surveillance, where such person is a white male named "Wayne"?

3. Where the evidence presented by the prosecution is such that from it a rational trier of fact could reasonably find that guilt was proven beyond a reasonable doubt, is the evidence sufficient to authorize a conviction?

THE PARTIES

In the Circuit Court of Mobile County, Alabama, the Court of Criminal Appeals of Alabama, and the Supreme Court of Alabama, the parties were Frederick Wayne Helton, who is Petitioner herein, as defendant, Appellant and Petitioner, respectively, and the State of Alabama, who is Respondent herein, as Plaintiff, Appellee, and Respondent, respectively.

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IN THE SUPREME COURT OF THE
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OCTOBER TERM, 1989

FREDERICK WAYNE HELTON,

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STATE OF ALABAMA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF AND ARGUMENT IN OPPOSITION TO THE PETITION

OPINIONS BELOW

The opinions and orders of Alabama Appellate Courts in the Petitioner's case, affirming his conviction, denying rehearing and denying certiorari are reported as follows:

Helton v. State, 549 So.2d 589 (Ala. Crim. App, 1989)

JURISDICTION

The petitioner has invoked this Honorable Court's jurisdiction under 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner is making an alleged claim under the Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

STATUTORY PROVISIONS INVOLVED

No statutory provisions are involved in this cause.

STATEMENT OF THE CASE

The Petitioner, Frederick Wayne Helton, was indicted for possession of a controlled substance[1], to wit, Lysergic acid

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[1] "§ 20-2-70. PROHIBITED ACTS A.

> (a) Except as authorized by this chapter, any person who possesses...controlled substances enumerated in schedules.I...is guilty of a felony and, upon conviction, for the first offense may be imprisoned for not less than two nor more than 15 years and, in addition may be fined not more than $25,000.00...." (Code of Alabama, 1985)

diethylamide[2], a.k.a. "L.S.D." or "acid", by the Grand Jury of Mobile County, Alabama, at its January, 1988, session. (R.p.1)

On February 8, 1988, the Petitioner waived arraignment and pleaded not guilty. (R.p.3)

On March 4, 1988, the Petitioner filed motions to suppress his statement and the evidence found as a result of a search of his residence pursuant to a search warrant;

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[2] §20-2-23. SAME -- LISTING OF CONTROLLED SUBSTANCES.

"The controlled substances listed in this section are included in schedule I:

* * *

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation: ...

"(i) Lysergic acid diethylamide...." (Code of Alabama, 1975) raising the same points raised on appeal in state court and here. The same were overruled, after a hearing, on June 16, 1988. (R.p.13-18)

On June 16, 1988, both parties agreed to submit the case to the court and to waive trial by jury. The Court then heard the evidence on the motions to suppress and the indictment in the same proceeding. (R.p.25 and Tr.4-101)

On June 16, 1988, the cause came on for trial, before Honorable Edward B. McDermott, a Circuit Judge. The Petitioner was attended by his Attorney, Honorable Thomas M. Haas. The State was represented by its District Attorney, Honorable Chris M. Galanos, and his Assistant, Honorable Russ Ramsey. (R.p.25 and Tr.1)

On hearing the evidence and argument of counsel, the Learned Trial Judge found and adjudged the Petitioner guilty as charged in the indictment. (R.p.25 and 100-101)

On July 22, 1988, the Petitioner was sentenced to six years imprisonment, a fine of $5,000.00 and to pay $25.00 to the victim's compensation fund. (R.p.51 and Tr.pp.6-7)

Appeal followed. (R.p.51 and Tr.p.7)

On May 12, 1989, the Court of Criminal Appeals affirmed the Petitioner's conviction with a most learned opinion. Helton v. State, 549 So.2d 589 (Ala. Crim. App, 1989)

On May 26, 1989, the Petitioner applied for rehearing, but the application was overruled on June 30, 1989, without further opinion

The Petitioner petitioned the Supreme Court of Alabama for a writ of certiorari raising the same points raised here. The same was denied on September 22, 1989.

STATEMENT OF THE FACTS

The Petitioner's conviction is based on the following facts:

On or about May 18, 1987, Officer Cesar Perez, an investigator assigned to the Narcotics Section of the Mobile Police Department, received information from a confidential informant to the effect that lysergic acid diethylamide or L.S.D. was being sold at a certain house. Officer Perez strip-searched the informer to make sure that the informer had no L.S.D. on his person. As officer Perez watched from the parking lot of an apartment complex next door, the informer approached the Petitioner's house. Perez observed that the house was exactly as the informer had described it: The first house facing Center Drive off of Old Shell Road, a yellowish tan house, with brown trim, surrounded by burglar bars. (Tr.pp.5-9)

Perez watched the informer knock at the house and gain admittance. About ten or fifteen minutes later the informant left the house. He met Officer Perez next door and turned over a heartshaped piece of blotting paper. The informer told Officer Perez that the paper was sold to him or her as L.S.D. by a white male known to the informer only as "Wayne". Perez recognized the heartshaped blotting paper as a way L.S.D. is commonly distributed in Mobile, Alabama. (Tr.pp.9-14)

Officer Perez submitted the blotting paper to the City Laboratory for analysis. On May 20, 1987, after receiving a report indicating the presence of L.S.D. on the paper, Perez sought and obtained a search warrant for the Petitioner's residence. The affidavit recited the facts heretofore narrated. The only objection to the warrant raised in the State Court appeal related to the description of the place to be searched. That description read as follows:

> "...[The] residence located on Center *Street*, approximately 2/10's of a mile South of Old Shell Road. Confidential informant further described the house as being Yellowish/Tan in color with Brown trimming and surrounded with burglar bars, being the first house to the right when proceeding South on Center *Street* from Old Shell Road...." (Tr.p.113; emphasis supplied)

The warrant was issued to search the

> "...Yellow, Tan house with brown trimming [sic], surrounded by burglar bars, located on Center *Street*, approximately 2/10's of a mile South of Old Shell Road, first house on the right facing Center *Street* off Old Shell...." (Tr.p.115; emphasis supplied)

It was undisputed that the Petitioner lived on Center *Drive*, not Center Street. It was also undisputed that Center Street is a very short street which runs from Doctor's Hospital to St. Stephens Road in Mobile and does not intersect Old Shell Road. It was also undisputed that the description of the Petitioner's house in the warrant was accurate in detail, except for the street-drive error. Finally, it was never suggested that the description in the warrant could have been taken as indicating any building in Mobile County, except the Petitioner's house. (R.pp.14-19, 35-37 and 113-115)

Since the informer had told Perez that the Petitioner had stated that, because of the burglar bars, he would have time to destroy the evidence before the police could get inside, the officers waited for the Petitioner to leave the house before attempting to execute the warrant. On May 21, 1987, the officers saw the Petitioner come out of the house, get in a car and drive away. A uniformed officer stopped the Petitioner. The Petitioner was arrested and brought back to the house. Using the Petitioner's keys the officers entered the house and searched it.

The Petitioner was advised of and acknowledged understanding his constitutional rights. The officers discovered a considerable quantity of L.S.D, as well as other controlled substances. When one of the searching officers found a blue vase containing contraband and brought it to Officer Perez. The Petitioner, who was seated near Perez said: "Oh, shit [sic]!" (Tr.p.23) Also, discovered were several pieces of mail addressed to the Petitioner. Some of the mail was addressed to him at 108 Center Street and some addressed to him at 108 Center Drive. (R.p.31) Although there were two bedrooms in the house, one was filled with musical equipment and had no bed, dresser or other furniture. (Tr.pp.19-32 and 54-55)

The identity of the materials seized as L.S.D. was stipulated. (R.p.79)

The Defense consisted primarily of character evidence, but one witness testified that a young lady lived with the Petitioner at some point. This was probably during the winter of 1986 or 1987. (R.pp.93-94)

SUMMARY OF THE ARGUMENT

1. A clerical error which cannot prevent a reasonable officer from ascertaining and identifying the place to be searched does not invalidate a search warrant. Steele v. United States, 267 U.S. 498, 503, 69 L.Ed. 757, 760, 45 S.Ct. 414 (1925).

2. The information available to the officers at the time they arrested the Petitioner certainly warranted a reasonable belief that the Petitioner was committing a felony. Texas v. brown, 460 U.S. 730, 742, 75 L.Ed.2d 502, 514, 103 S.Ct. 1535 (1983).

3. The evidence against the Petitioner was patently sufficient to authorize his conviction. E.g. Jackson v. Virginia, 443 u.s. 307, 326, 61 L.Ed.2d 560, 578, 99 S.Ct. 2781 (1979).

ARGUMENT

I.

IN RE: THE SEARCH WARRANT

The Petitioner claims that the description of the place to be searched was insufficient, since the Petitioner lived on Center Drive, and the warrant described the residence as being on Center Street. However, the affidavit and warrant described in detail the rather unique appearance of the house and its precise relationship to Old Shell Road. If an officer had gone to Center Street and attempted to locate the house, it is highly unlikely that he or she would have found any building matching the description in the warrant, and it would have been impossible to find any house having such a relationship to Old Shell Road, since Center Street and Old Shell Road do not intersect. Such an officer would have either returned the warrant "not found" or assumed that there was confusion over the street-drive designation, a common clerical error, and tried Center Drive. In the later case the officer would have immediately located the Petitioner's house. It is clear that the warrant authorized the search of no building, except the Petitioner's house. Compare Finch v. State, 479 So.2d 1314, 1318-1321 (Ala. Crim. App, 1985), cited and relied on by Petitioner.

This Honorable Court has ruled that:

> "...It is enough if the description is such that the officer with a search warrant can, with reasonable effort, ascertain and identify the place intended...." Steele v. United States, 267 U.S. 498, 503, 69 L.Ed. 757, 760, 45 S.Ct. 414 (1925)

Obviously, the description here met this standard. The Postal Service had no difficulty delivering the Petitioner's mail, even when it was addressed to him on Center Street. Obviously, any intelligent person familiar with Mobile and the tendency of humans for clerical errors, would have known that Center Drive was intended from the reference to Old Shell Road. Neugent v. State, 340 So.2d 55, 57 (Ala. Crim. App, 1976); cert. den. 340 So.2d 60. Helton v. State, 549 So.2d 589, 589-591 (Ala. Crim. App, 1989); cert. den.

II.

IN RE: THE ARREST

The Petitioner contends that he was arrested without probable cause. Yet, the officers knew that a white male named "Wayne" at this residence was selling L.S.D. They observed no one else at the residence. A neutral magistrate had found probable cause to believe that L.S.D. was located on the premises. The Petitioner was the only person observed there. The Petitioner, a white male named "Wayne", was arrested just after he departed the building.

Probable cause is concerned with probabilities, not evidence sufficient to establish a prima facie case or proof beyond a reasonable doubt. Spinelli v. United States, 393 U.S. 401, 419, 21 L.Ed.2d 637, 645, 89 S.Ct. 584 (1969) As this Honorable Court has said:

> "...As the Court frequently has remarked, probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would 'warrant a man of reasonable caution in the belief,' Carroll v. United States, 267 U.S. 132, 162, 69 L.Ed. 543, 45 S.Ct. 280 (1925), that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A 'practical, nontechnical' probability that incriminating evidence is involved is all that is required. Brinegar v. United States, 338 U.S. 160, 176, 93 L.Ed. 1879, 69 S.Ct. 1302 (1949). (Texas v. Brown, 460 U.S. 730, 742, 75 L.Ed.2d 502, 514, 103 S.Ct. 1535 [1983])

Obviously, the officers in this case had clear probable cause at the time they arrested the Petitioner. Helton v. State, 549 So.2d 589, 591-592 (Ala. Crim. App, 1989); cert. den.

III.

IN RE: THE SUFFICIENCY OF THE EVIDENCE

The Petitioner was convicted on the basis of circumstantial evidence which proved the following:

1. L.S.D. was obtained at the house two days before the search.
2. The Petitioner resided at the house.
3. No one else was observed at the house.
4. The only other person who was shown to have lived there was a young woman, who

left some months, perhaps more than a year, before.

5. There was considerable L.S.D. found in the house in numerous locations.

6. The Petitioner's reaction on seeing the blue vase in police hands was extremely incriminating.

Obviously, this was sufficient evidence under the United States Constitution (Jackson v. Virginia, 443 U.S. 307, 326, 61 L.Ed.2d 560, 578, 99 S.Ct. 2781 [1979]) and Alabama. Law. Robinette v. State, 531 So.2d 697 (Ala, 1988); Ex parte Cunningham, 548 So.2d 1049 (Ala, 1989); Lander v. State, ___ So.2d ___ (Ala. Crim. App, May 26, 1989), Mns. op. p. 2; cert. den. (Ala, Dec. 1, 1989); Helton v. State, 549 So.2d 589, 592ff (Ala. Crim. App, 1989); cert. den.

CONCLUSION

In conclusion, the Respondent respectfully submits that there is no basis for the writ, and, therefore, the Respondent prays that the writ be denied.

Respectfully submitted,

DON SIEGELMAN
ATTORNEY GENERAL
BY:

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CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Respondent herein, do hereby certify that on this _____ day of January, 1990, I did serve the requisite number of copies of the foregoing on the Attorneys for Frederick Wayne Helton, Petitioner, by mailing the same to said Attorneys, first class postage prepaid and addressed as follows:

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Honorable N. Ruth Haas
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